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APPLICATION NO	FLING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
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09-629,607 07/31/2000 Andrea Lukas 4180-66 4212

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OSTROLENK FABER GERB & SOFFEN  
1180 AVENUE OF THE AMERICAS  
NEW YORK, NY 100368403

EXAMINER
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SPISICH, MARK

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 08 08 2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	Applicant(s)
09/629,607	LUKAS ET AL
Examiner	Art Unit
Mark Spisch	1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 07 April 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-14 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-14 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 07 April 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)  The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 5)  Notice of Informal Patent Application (PTO-152)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6)  Other: \_\_\_\_\_

## DETAILED ACTION

### *Drawings*

1. The substitute drawing sheet, filed on 7 April 2003 has been approved.

### ***Claim Rejections - 35 USC § 112***

2. Claims 4-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. "For cleaning an oral cavity attachment means" (claim 4, line 2) is awkward/confusing in that there would appear to be a missing term or comma between "cavity" and "attachment". It is suggested that a comma be inserted between "cavity" and "attachment" in claim 4 (line 2). Applicant should review the claims for any additional informalities.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1,2,4 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Okada (USP 5,421,726). The patent to Okada discloses an electric toothbrush (2) comprising a motor (12) in a handpiece (4) for driving a vibration-generating means (16) and an accessory mounting comprising an elongated protective sleeve (which includes the protuberance portion 8 **as well as the portion integral therewith which is**

**received within the end (4a) of the handpiece** and which defines a space in which the vibration-generating means (16) is received; see the right portion of fig 1) and a sleeve (6b) fitted onto the cover so as to cover a portion of its length. The sleeve covers a substantial portion of the cover (claim 2) and the sleeve (6b) includes means for removably attaching it to the cover and means (6a) at the other end for holding a cleaning accessory.

5. Claims 1 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Aiyar (USP 5,471,695). The patent to Aiyar discloses a handpiece (15) in which is arranged a motor (50) for driving a vibration-generating means (60), an elongated protective cover (80) attachable to the handpiece and which includes an interior which receives the vibration-generating means and further including a sleeve (70) fitted onto the cover so as to cover a portion of its length. The mere recitation of the intended use of the device (calling it a toothbrush) fails to define over the structure of the prior art.

6. Claims 1-3 and 14 are rejected under 35 U.S.C. 102(a) as being anticipated by Hahn et al (USP 5,987,681). The patent to Hahn discloses an electric toothbrush (II) comprising a handpiece (1a) in which a motor (4) is arranged for driving a vibration-generating means (5) (which includes the shaft portions 51 extending therefrom), a protective cover (52,7a OR 7b) and a sleeve (3) fitted onto the cover so as to cover a portion of its length. The sleeve (3) covers the entire length of the members which read on the "cover" (claim 2) and the ring (8) reads on the recited elastic ring (claim 3).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okada (USP 5,421,726) in view of DE 1,212,036. The patent to Okada discloses the invention substantially as claimed with the exception of the accessory supporting portion of the sleeve being obliquely oriented. '036 discloses a vibrating toothbrush wherein the brush end (1) of the sleeve (3) is obliquely oriented with respect to the axis of the sleeve. It would have been obvious to one of ordinary skill to have modified the device of Okada as such so as to better reach all portions of the teeth. The particular angle (claim 6) would be an obvious choice of design to one of ordinary skill.

9. Claims 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okada (USP 5,421,726) in view of Matsunaga (USP 1,414,886). The patent to Okada discloses the invention substantially as claimed with the exception of the opening for receiving the "accessory". The patent to Matsunaga discloses a polygonal opening (11) for accommodating a cleaning accessory (16). It would have been obvious to one of ordinary skill to have modified the device of Okada as such so that the cleaning portion could be replaced when worn while still retaining the sleeve. It would have been obvious to have modified the shape of the opening (claim 9) to suit the particular accessory shape.

10. Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okada (USP 5,421,726) in view of Moret et al (USP 4,880,382). The patent to Okada discloses the invention substantially as claimed with the exception of the particular types of accessories. The use of different shapes of brushes (claims 11-12) as well as flossing (44) on a motor driven toothbrush is shown by Moret. It would have been obvious to have modified the device of Okada with such cleaning accessories so that different cleaning operations could be performed.

***Response to Arguments***

11. Applicant's arguments filed 7 April 2003 have been fully considered but they are not persuasive. With respect to Okada, the protective cover is the element (which happens to also include the protuberance 8 in fig 1) which is received within the end portion (4a) of the handpiece (4) and which includes a cavity in which the vibration-generating means (16) is received. Applicant's arguments assume that the examiner has termed the protuberance (8) alone as the protective cover. Applicant's sole argument with respect to the patent to Aiyar pertains to the use of the device as a "toothbrush". Absent some distinguishing structure in the claim(s), mere recitations of the intended use fails to distinguish the claimed invention from the prior art. With regard to the patent to Hahn et al, the element #52 receives and covers at least a portion of the vibration-generating means (the shaft portion extending from the weight 5) as well as a cover (3) which covers the entirety of the cover. The arguments pertaining to the secondary references rely on the primary arguments as they pertain to the alleged deficiencies of the base references.

***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (703) 308-1271. The examiner can normally be reached on M-Th (6-3:30), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (703) 308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

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Mark Spisich  
Primary Examiner  
Art Unit 1744

MS  
May 6, 2003